

Title:

Human Rights based approach to Criminal Investigation - Prospects and Challenges for the Sri Lanka Police

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a) Background

Human rights should form the basis for the Sri Lanka Police Service, who are legally and morally bound to serve and protect the people, whose sovereignty is enshrined in the Constitution. Police officers are in a position to legally limit some of the very fundamental rights of the people, especially those who are suspected of committing a crime. It might happen during arrest, detention, investigation and search. The right to fair trial and the presumption of innocence should form the basis for all criminal investigations. A lawful and ethical investigation cannot go against the percept of a fair trial whereas an unlawful or unethical investigation can subvert that right even before the commencement of the trial. Police officers play a critical role in laying down the foundation for the judicial process. The detection of the crime through investigation and the gathering of evidence are initial steps in the judicial process that can lead to the conviction and punishment of those suspects, who are found guilty of the crime.

b) Research Problem

Criminal investigations conducted by the Police have a severe impact on human rights of the people including the victims, witnesses, suspects of a crime and the society where the crime is committed. Empirical studies established that no one has conducted any research on prospects and challenges for the Sri Lanka Police from a human rights based approach in carrying out criminal investigations in Sri Lanka. As such, the findings of this proposed study would explore means and mechanisms to improve professionalism of the Sri Lanka Police by gearing itself for the constantly evolving challenges of the 21st Century with a high professional ethos, sense of accountability and transparency in its roles and responsibilities towards the people in Sri Lanka. The absence of empirical studies on human rights based criminal investigation leads to a perception of violations of human rights by police officers.

c) Objectives

- i. This research is to examine the existing institutional mechanisms in the Police for their inadequacies and identify remedial mechanisms to prevent repetitions of such complaints in the future.
- ii. To ascertain the role of ethnic or other divisive factors, social, training, previous areas of postings and educational background of police officers against whom there are public complaints, and to identify and evaluate the educational levels including the levels of training of Police officers conducting crime investigations.
- iii. To examine the existing institutional mechanisms in the Police for their inadequacies and identify remedial mechanisms to prevent repetitions of such complaints in the future.
- iv. To formulate an Action Plan for the Sri Lanka Police for the effective maintenance of public order through reducing fear of crime, creating a safe environment, and serving and protecting the public in a fair and objective manner by the Police without violating their basic rights.

d) Research Methodology

This Research adopted the Qualitative, Quantitative & Deductive methods. The study design is also cross – sectional in nature involving personal interviews of the population comprising victims/complainants, witnesses, neighbourhood, suspects/accused of major crimes recorded between 2005 and 2010, Police officers who investigated major crimes recorded between 2005 and 2010. The sampling size was 250 and selected using the stratified sampling method. Using a questionnaire, data collection was carried out by structured interviews of Police officers, who investigated major crimes between 2005 and 2010.

e) Key Findings

During criminal investigations, the Police arrest people who look as if they might commit a crime. Some of the suspects are detained overnight and then released, apparently to “discourage” criminals. To put pressure on a suspect to surrender themselves, Police officers illegally detain their relatives. The victims are often elderly parents and women. In the absence of the presumption of innocence, even when the main purpose of ill-treatment or torture is to obtain a confession or information, the suspect is seen as “deserving” the treatment by virtue of being a criminal.

The aggressive enforcement of law and order is used as a quick-fix solution to the problem of rising crime, without tackling the root causes for the increase in crime. Due to the absence of proper supervision of the senior level Police officers, the junior level Police officers tend to violate the rights of the citizens. The Police often arrest people before they have built up any evidence. They evade obligations under national laws to bring detainees before a court of law within a specified period of time. They may conceal the whereabouts of a detainee from family and lawyers. The arrested suspect is then at risk of a “confession - oriented” investigation in which the police seek the information they need, sometimes simply in order to conclude the criminal investigation. The need to ensure that the public, particularly the vulnerable groups are fully educated and made more aware of their rights through mechanisms such as the incorporation of human rights education in the school curriculum.

f) Conclusions

The militarization of the role of the Sri Lanka Police Service due to the war has contributed to the lack of professionalism within the Police to conduct criminal investigations without violating the human rights of the people they are bound to serve and protect under the Constitution. Violations of human rights by police officers during investigation of crimes in Sri Lanka continue to occur owing to the inordinate delays in instituting judicial / disciplinary action against police officers allegedly violating human rights. The resultant increased cases of human rights violations by Police officers are due to inadequate training on human rights education provided to Police officers. The lack of adequate specialized training in investigation of crimes including interviewing & interrogation techniques, and forensic medicine & forensic science leads to Police officers resorting to primitive methods such as torture considering it to be the shortest, easiest, and quickest way to solve crimes. The violation of human rights by Sri Lanka Police during criminal investigations cannot be looked into in isolation of surrounding socio - political dynamics. The need to develop a human rights based approach to policing curriculum to educate Police officers.

g) References

Amnesty International (2006), Understanding Policing: A resource for human rights activists, Amnesty International Nederland, Amsterdam

Asian Human Rights Commission (February 2004), Second Special Report: Torture and the collapse of Policing in Sri Lanka, Asian Legal Resource Centre Article 2, Vol. 3 No. 1
